STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1585 By: Holt, Ferguson and Hiett of the House

and

Wright of the Senate

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Section 1001, as last amended by Section 1, Chapter 311, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1001), which relates to gross production tax; providing exemption from gross production tax for certain oil and gas production; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1001, as last amended by Section 1, Chapter 311, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1001), is amended to read as follows:

Section 1001. (a) There is hereby levied upon the production of asphalt, ores bearing lead, zinc, jack, gold, silver and copper a tax equal to three-fourths of one percent (3/4 of 1%) on the gross value thereof.

(b) Except as otherwise exempted pursuant to subsections (d), (e), (f), (g) ~~and~~, (h) and (s) of this section, there is hereby

levied upon the production of oil a tax equal to seven percent (7%) of the gross value of the production of oil based on a per barrel measurement of forty-two (42) U.S. gallons of two hundred thirty-one (231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit and a tax equal to seven percent (7%) of the gross value of the production of gas.

(c) The tax hereby levied shall also attach to, and is levied on, what is known as the royalty interest; and the amount of such tax shall be a lien on such interest.

(d) (1) Any incremental production attributable to the working interest owners which results from an enhanced recovery project shall be exempt from the gross production tax levied pursuant to this section from the project beginning date until project payback is achieved for new enhanced recovery projects or until project payback is achieved but not to exceed a period of thirty-six (36) months for tertiary enhanced recovery projects existing on July 1, 1988. This exemption shall take effect July 1, 1988 and shall apply to enhanced recovery projects approved or having a project beginning date prior to July 1, 1993. Project payback pursuant to this paragraph for enhanced recovery projects qualifying for this exemption on or after July 1, 1990, and on or before June 30, 1993, shall be determined by appropriate payback indicators which will not include any expenses beyond the completion date of the well. Project payback pursuant to this paragraph for enhanced recovery projects qualifying for this exemption on or after October 17, 1987, and on or before June 30, 1990, shall be determined by appropriate payback indicators as previously established and allowed by the Oklahoma Tax Commission for projects qualifying during such period.

(2) For secondary recovery projects approved and having a project beginning date on or after July 1, 1993, and before July 1, 1998, any incremental production attributable to the working interest owners which results from such secondary recovery projects

shall be exempt from the gross production tax levied pursuant to this section from the project beginning date until project payback is achieved but not to exceed a period of ten (10) years. Project payback pursuant to this paragraph shall be determined by appropriate payback indicators which will provide for the recovery of capital expenses and fifty percent (50%) of operating expenses, in determining project payback.

(3) For tertiary recovery projects approved and having a project beginning date on or after July 1, 1993, and before July 1, 1998, any incremental production attributable to the working interest owners which results from such tertiary recovery projects shall be exempt from the gross production tax levied pursuant to this section from the project beginning date until project payback is achieved, but not to exceed a period of ten (10) years. Project payback pursuant to this paragraph shall be determined by appropriate payback indicators which will provide for the recovery of capital expenses and operating expenses, excluding administrative expenses, in determining project payback. The capital expenses of pipelines constructed to transport carbon dioxide to a tertiary recovery project shall not be included in determining project payback pursuant to this paragraph.

(4) The provisions of this subsection shall also not apply to any enhanced recovery project using fresh water as the primary injectant, except when using steam.

(5) For purposes of this subsection:

a. "incremental production" means the amount of crude oil or other liquid hydrocarbons which is produced during an enhanced recovery project and which is in excess of the base production amount of crude oil or other liquid hydrocarbons. The base production amount shall be the average monthly amount of production for the twelve-month period immediately prior to the project

beginning date minus the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the project beginning date. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve-month period immediately prior to the project beginning date as determined by the Corporation Commission based on the production history of the field, its current status, and sound reservoir engineering principles.

b. "project beginning date" means the date on which the injection of liquids, gases, or other matter begins on an enhanced recovery project.

(6) The Oklahoma Corporation Commission shall promulgate rules for the qualification for this exemption which shall include, but not be limited to, procedures for determining incremental production as defined in subparagraph a of paragraph (5) of this subsection, and the establishment of appropriate payback indicators as approved by the Oklahoma Tax Commission for the determination of project payback for each of the exemptions authorized by this subsection.

(7) For new secondary recovery projects and tertiary recovery projects approved by the Oklahoma Corporation Commission on or after July 1, 1993, and before July 1, 1998, such approval shall constitute qualification for an exemption.

(8) Any person seeking an exemption shall file an application for such exemption with the Oklahoma Tax Commission which, upon determination of qualification by the Oklahoma Corporation Commission, shall approve the application for such exemption.

(9) The Tax Commission may require any person requesting such exemption to furnish information or records concerning the exemption as is deemed necessary by the Commission.

(10) Upon the expiration of the exemption granted pursuant to this subsection, the Tax Commission shall collect the gross production tax levied pursuant to this section.

(e) (1) The production of oil, gas or oil and gas from a horizontally drilled well producing prior to July 1, 1994 which production commenced after the effective date of this act, shall be exempt from the gross production tax levied pursuant to subsection (b) of this section from the project beginning date until project payback is achieved but not to exceed a period of twenty-four (24) months commencing with the month of initial production from the horizontally drilled well. Provided, any incremental production which results from a horizontally drilled well producing prior to July 1, 1994, shall be exempt from the gross production tax levied pursuant to subsection (b) of this section from the project beginning date until project payback is achieved but not to exceed a period of twenty-four (24) months commencing with the month of initial production from the horizontally drilled well. For purposes of subsection (d) of this section and this subsection, project payback shall be determined as of the date of the completion of the well and shall not include any expenses beyond the completion date of the well, and subject to the approval of the Oklahoma Tax Commission.

(2) As used in this subsection, "horizontally drilled well" shall mean an oil, gas or oil and gas well drilled or recompleted in a manner which encounters and subsequently produces from a geological formation at an angle in excess of seventy (70) degrees from vertical and which laterally penetrates a minimum of one hundred fifty (150) feet into the pay zone of said formation.

(f) (1) Except as otherwise provided in subsection (i) of this section, the severance or production of oil, gas or oil and gas from an inactive well shall be exempt from the gross production tax levied pursuant to subsection (b) of this section for a period of

twenty-eight (28) months from the date upon which production is reestablished. This exemption shall take effect July 1, 1994, and shall apply to wells for which production is reestablished prior to July 1, 1997. For all such production, a credit against gross production taxes shall be issued as provided in subsection (j) of this section.

(2) As used in this subsection, "inactive well" means any well that has not produced oil, gas or oil and gas for a period of not less than two (2) years as evidenced by the appropriate forms on file with the Corporation Commission reflecting the well's status.

(g) (1) Except as otherwise provided in subsection (i) of this section, any incremental production attributable to the working interest owners which results from a production enhancement project shall be exempt from the gross production tax levied pursuant to subsection (b) of this section for a period of twenty-eight (28) months from the date of project completion of the production enhancement project. This exemption shall take effect July 1, 1994, and shall apply to production enhancement projects having a project beginning date prior to July 1, 1997. For all such production, a credit against gross production taxes shall be issued as provided in subsection (j) of this section.

(2) As used in this subsection:

a. "production enhancement project" means any workover as defined in this paragraph, recompletion as defined in this paragraph, or fracturing of a producing well,

b. "incremental production" means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production,

c. "base production" means the average monthly amount of production for the twelve-month period immediately prior to the effective date of this act,

d. "recompletion" means any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in said existing oil or gas well, and

e. "workover" means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. "Workover" includes but is not limited to acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. "Workover" shall not mean the routine maintenance, repair, or replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

(h) (1) Except as otherwise provided in subsection (i) of this section, the production of oil, gas or oil and gas from wells spudded between July 1, 1994, and June 30, 1997 and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax levied pursuant to subsection (b) of this section from the date of first sales for a period of twenty-eight (28) months. For all such wells spudded, a credit against gross production taxes shall be issued as provided in subsection (j) of this section.

(2) In no case shall the total amount of gross production tax exemption or credit provided for in paragraph (1) of this subsection exceed the total cost of drilling and completing the well.

(3) The Oklahoma Corporation Commission shall promulgate rules requiring all operators claiming the exemption or credits in paragraph (1) of this subsection to file a certificate with the Commission certifying that the operator within twelve (12) months from the date of the certificate will invest in the State of Oklahoma an amount equal to the total of any credits or exemptions received in the previous twelve (12) months. The deadline for filing the first certificate shall be July 31, 1996, and each July 31 thereafter, until the conclusion of the program.

(4) The Oklahoma Corporation Commission shall deliver to the Legislature a report on the number of wells as defined by paragraph (1) of this subsection that are drilled and the amount of production from those wells. The first such report shall be delivered to the Legislature no later than February 1, 1996, and each February 1, thereafter, until the conclusion of the program.

(i) (1) The exemptions provided for in subsections (f), (g) and (h) of this section shall not apply:

a. to the severance or production of oil, upon determination by the Oklahoma Tax Commission that the weighted average price of Oklahoma oil exceeds Twenty Dollars ($20.00) per barrel calculated on an annual calendar year basis, and

b. to the severance or production of gas, upon determination by the Oklahoma Tax Commission that the weighted average wellhead price of Oklahoma gas exceeds Two Dollars and fifty cents ($2.50) per Million British Thermal Units (MMBTU) calculated on an annual calendar year basis.

(2) Notwithstanding the exemptions granted pursuant to subsections (f), (g) and (h) of this section, there shall continue to be levied upon the production of petroleum or other crude or mineral oil or natural gas or casinghead gas, as provided in

subsection (b) of this section, from any wells provided for in subsections (f), (g) or (h) of this section, a tax equal to one percent (1%) of the gross value of the production of petroleum or other crude or mineral oil or natural gas or casinghead gas. The tax hereby levied shall be apportioned as follows:

a. fifty percent (50%) of the sum collected shall be apportioned to the County Highway Fund as provided in paragraph 3 of Section 1004 of this title, and

b. fifty percent (50%) of the sum collected shall be apportioned to the appropriate school district as provided in paragraph 4 of Section 1004 of this title.

Upon the expiration of the exemption granted pursuant to subsections (f), (g) or (h) of this section, the provisions of this paragraph shall have no force or effect.

(j) For all production exempt from gross production taxes pursuant to subsections (f), (g) and (h) of this section between July 1, 1994, and June 30, 1995, a credit against gross production taxes shall be issued in the amount of such gross production taxes paid from the date of first sales through June 30, 1995, which shall not be claimed until after July 1, 1995. For all such production between July 1, 1995, and June 30, 1996, a credit against gross production taxes shall be issued in the amount of such gross production taxes paid during such period, which shall not be claimed until after July 1, 1996. For all such production between July 1, 1996, and June 30, 1997, a credit against gross production taxes shall be issued in the amount of such gross production taxes paid during such period, which shall not be claimed until after July 1, 1997.

(k) (1) The Corporation Commission and the Oklahoma Tax Commission shall promulgate joint rules for the qualification for the exemptions provided for in subsections (e), (f), (g) and (h) of this section and such rules shall contain provisions for

verification of any wells from which production may be qualified for such exemptions.

(2) Any person requesting any such exemption shall file an application for qualification for such exemption with the Oklahoma Corporation Commission which, upon finding that the well meets the requirements of subsection (e), (f), (g) or (h) of this section, shall approve the application for qualification.

(3) Any person seeking such exemption shall:

a. file an application for such exemption with the Oklahoma Tax Commission which, upon determination of qualification by the Oklahoma Corporation Commission, shall approve the application for such exemption, and

b. provide a copy of said approved application to the remitter of the gross production tax.

(4) The Tax Commission may require any person requesting such exemption to furnish necessary financial and other information or records in order to determine and justify the exemption.

(5) Upon the expiration of the exemption granted pursuant to subsection (e), (f), (g) or (h) of this section, the Tax Commission shall collect the gross production tax levied pursuant to this section. If a person who qualifies for such exemption elects to remit his or her own gross production tax during the exemption period, the first purchaser shall not be liable to withhold or remit the tax until the first day of the month following the receipt of written notification from the person who is qualified for such exemption stating that such exemption has expired and directing the first purchaser to resume tax remittance on his or her behalf.

(l) All persons shall only be entitled to either the exemption granted pursuant to subsection (d) of this section or the exemption granted pursuant to subsection (e), (f), (g) or (h) of this section for each oil, gas or oil and gas well drilled or recompleted in this state. However, any person who qualifies for the exemption granted

pursuant to subsection (e), (f), (g) or (h) of this section shall not be prohibited from qualification for the exemption granted pursuant to subsection (d) of this section, if the exemption granted pursuant to subsection (e), (f), (g) or (h) of this section has expired.

(m) The Tax Commission shall have the power to require any such person engaged in mining or the production or the purchase of such asphalt, mineral ores aforesaid, oil, or gas, or the owner of any royalty interest therein to furnish any additional information by it deemed to be necessary for the purpose of correctly computing the amount of said tax; and to examine the books, records and files of such person; and shall have power to conduct hearings and compel the attendance of witnesses, and the production of books, records and papers of any person.

(n) Any person or any member of any firm or association, or any officer, official, agent or employee of any corporation who shall fail or refuse to testify; or who shall fail or refuse to produce any books, records or papers which the Tax Commission shall require; or who shall fail or refuse to furnish any other evidence or information which the Tax Commission may require; or who shall fail or refuse to answer any competent questions which may be put to him by the Tax Commission, touching the business, property, assets or effects of any such person relating to the gross production tax imposed by this article or exemption authorized pursuant to this section or other laws, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or imprisonment in the jail of the county where such offense shall have been committed, for not more than one (1) year, or by both such fine and imprisonment; and each day of such refusal on the part of such person shall constitute a separate and distinct offense.

(o) The Tax Commission shall have the power and authority to ascertain and determine whether or not any report herein required to be filed with it is a true and correct report of the gross products, and of the value thereof, of such person engaged in the mining or production or purchase of asphalt and ores bearing minerals aforesaid and of oil and gas. If any person has made an untrue or incorrect report of the gross production or value or volume thereof, or shall have failed or refused to make such report, the Tax Commission shall, under the rules prescribed by it, ascertain the correct amount of either, and compute said tax.

(p) The payment of the taxes herein levied shall be in full, and in lieu of all taxes by the state, counties, cities, towns, school districts and other municipalities upon any property rights attached to or inherent in the right to said minerals, upon producing leases for the mining of asphalt and ores bearing lead, zinc, jack, gold, silver or copper, or for oil, or for gas, upon the mineral rights and privileges for the minerals aforesaid belonging or appertaining to land, upon the machinery, appliances and equipment used in and around any well producing oil, or gas, or any mine producing asphalt or any of the mineral ores aforesaid and actually used in the operation of such well or mine. The payment of gross production tax shall also be in lieu of all taxes upon the oil, gas, asphalt or ores bearing minerals hereinbefore mentioned during the tax year in which the same is produced, and upon any investment in any of the leases, rights, privileges, minerals or other property described herein. Any interest in the land, other than that herein enumerated, and oil in storage, asphalt and ores bearing minerals hereinbefore named, mined, produced and on hand at the date as of which property is assessed for general and ad valorem taxation for any subsequent tax year, shall be assessed and taxed as other property within the taxing district in which such property is situated at the time.

(q) No equipment, material or property shall be exempt from the payment of ad valorem tax by reason of the payment of the gross production tax except such equipment, machinery, tools, material or property as is actually necessary and being used and in use in the production of asphalt or of ores bearing lead, zinc, jack, gold, silver or copper or of oil or gas. It is expressly declared that no ice plants, hospitals, office buildings, garages, residences, gasoline extraction or absorption plants, water systems, fuel systems, rooming houses and other buildings, nor any equipment or material used in connection therewith, shall be exempt from ad valorem tax.

(r) The exemption from ad valorem tax set forth in subsections (p) and (q) of this section shall continue to apply to all property from which production of oil, gas or oil and gas is exempt from gross production tax pursuant to subsection (d), (e), (f), (g) or (h) of this section.

(s) In addition to the exemptions allowed by this section, each calendar month the gross value of the production of the first barrel of oil, based on the barrel measurement of forty-two (42) U.S. gallons of two hundred thirty-one (231) cubic inches per gallon and the gross value of the production of the first six thousand (6,000) cubic feet (mcf) of natural gas from each producing well in this state shall be exempt from the gross production tax levied pursuant to this section.

SECTION 2. This act shall become effective July 1, 1995.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-1-5514 JAF